IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JAMES J. WYLAM and JANICE L. WYLAM, h/w Plaintiffs v. TRADER JOE'S COMPANY, ET AL. Defendants	CIVIL ACTION NO. 3:16-cv-02112-RDM

ANSWER OF DEFENDANTS, TRADER JOE'S COMPANY, TRADER JOE'S EAST, INC. AND T.A.C.T. HOLDING, INC., WITH AFFIRMATIVE DEFENSES

Defendants, Trader Joe's Company, Trader Joe's East, Inc. and T.A.C.T. Holding, Inc., by and through their counsel, Harvey, Pennington Ltd, hereby set forth the following answer as follows:

1. Answering Defendants are without sufficient knowledge, information or facts to determine the truth or accuracy of this averment and therefore deems it denied.

2. Answering Defendants are without sufficient knowledge, information or facts to determine the truth or accuracy of this averment and therefore deems it denied.

3. It is admitted that Trader Joe's Company is a privately held company with a business location as noted and it is further admitted that Trader Joe's Company is not a citizen of Pennsylvania.

4. Admitted in part, denied in part. It is admitted that Trader Joe's East, Inc. is a company and is not a citizen of Pennsylvania. It is denied that its principal office location is

in California. On the contrary, Trader Joe's East, Inc. has business locations throughout the United States with a principal location in Boston, Massachusetts.

5. Admitted.

6. This averment is directed towards a party other than Answering Defendants and there no response is required.

7. To the extent that this averment is directed towards Answering Defendants, it is admitted that the defendants have limited business activity at the location noted in the nature of having products distributed on their behalf by other entities.

8. To the extent that this averment alleges that Answering Defendants have any role in oversight or operation of the facility, this portion of the averment is denied. On the contrary, Answering Defendants have no oversight or control over the facility.

9. To the extent that this averment is directed towards Answering Defendants, it is admitted that Answering Defendants buy, store, advertise, and sell products in the Commonwealth of Pennsylvania. It is denied that Answering Defendants make products. On the contrary, Answering Defendants are engaged in the sale of retail products at commercial locations including locations within the Commonwealth of Pennsylvania.

10. Denied. Answering Defendants are without sufficient knowledge, information or belief to make a determination as to the truth and veracity of this averment and therefore deems it denied.

11. Denied. Answering Defendants are without sufficient knowledge, information or belief to make a determination as to the truth and veracity of this averment and therefore deems it denied.

12. Admitted in part, denied in part. To the extent that this averment is directed towards Answering Defendants, Answering Defendants admit that Trader Joe's Company and T.A.C.T. Holding, Inc. have principal business locations in California. It is denied that Trader Joe's East, Inc. has a principal location in California. On the contrary, Trader Joe's East, Inc. has a principal location in Massachusetts.

13. Denied as stated as the Complaint speaks for itself.

14. Denied as a legal conclusion to which no responsive pleading is required.

15. Denied as a legal conclusion to which no responsive pleading is required.

16. Denied as a legal conclusion to which no responsive pleading is required.

17. Denied. Answering Defendants are without sufficient knowledge, information or belief to make a determination as to the truth and veracity of this averment and therefore deems it denied.

18. Denied. Answering Defendants are without sufficient knowledge, information or belief to make a determination as to the truth and veracity of this averment and therefore deems it denied.

19. Denied. Answering Defendants are without sufficient knowledge, information or belief to make a determination as to the truth and veracity of this averment and therefore deems it denied.

20. Admitted in part, denied in part. It is admitted that Answering Defendant, Trader Joe's East, Inc. owns the facility at 6835 Silver Crest Road. It is specifically denied that other two Answering Defendants own this facility. On the contrary, as initially stated, Answering Defendant, Trader Joe's East, Inc. is the owner. To the extent that this averment alleges that any of the Answering Defendants operate the facility or have any involvement in

delegating tasks as alleged, Answering Defendants specifically deny this portion of this averment. On the contrary, Answering Defendants were not involved in the operation or supervision of the facility.

21. Denied. This averment is initially denied as a legal conclusion to which no responsive pleading is required. This averment is further denied as Answering Defendants had no maintenance nor supervisory role at the facility.

22. Denied as stated. To the extent that this averment is directed towards Answering Defendants, Answering Defendants are initially without sufficient knowledge or information to determine what specific equipment and scaffolding is being referenced in this averment. Answering Defendants further deny that they had any responsibility for maintaining equipment or scaffolding as noted. On the contrary, Answering Defendants played no role nor had any involvement with scaffolding at this location.

23. Denied. Answering Defendants are without sufficient knowledge, information or belief to make a determination as to the truth and veracity of this averment and therefore deems it denied.

24. Denied. Answering Defendants are without sufficient knowledge, information or belief to make a determination as to the truth and veracity of this averment and therefore deems it denied.

25. Denied. Answering Defendants are without sufficient knowledge, information or belief to make a determination as to the truth and veracity of this averment and therefore deems it denied.

26. Denied. Answering Defendants are without sufficient knowledge, information or belief to make a determination as to the truth and veracity of this averment and

therefore deems it denied. By way of further answer, Answering Defendants deny that they had any employees who would have been involved with setting up scaffolding at the alleged location of this incident. On the contrary, Answering Defendants had no involvement or role in regard to scaffolding.

27. Denied. Answering Defendants are without sufficient knowledge, information or belief to make a determination as to the truth and veracity of this averment and therefore deems it denied. By way of further answer, and to the extent that this averment is directed towards Answering Defendants, Answering Defendants deny that they at any time had any ownership interest in any equipment involved in this alleged incident. On the contrary, Answering Defendants did not own or control any scaffolding.

28. Denied. Answering Defendants are without sufficient knowledge, information or belief to make a determination as to the truth and veracity of this averment and therefore deems it denied.

29. Denied. Answering Defendants are without sufficient knowledge, information or belief to make a determination as to the truth and veracity of this averment and therefore deems it denied.

30. Denied. Answering Defendants are without sufficient knowledge, information or belief to make a determination as to the truth and veracity of this averment and therefore deems it denied.

31. Denied. Answering Defendants are without sufficient knowledge, information or belief to make a determination as to the truth and veracity of this averment and therefore deems it denied.

32. To the extent that this averment is directed towards Answering Defendants, Answering Defendants specifically deny that they owned or had control of the scaffolding. On the contrary, Answering Defendants had no such ownership or control. The remainder of this averment is denied as a legal conclusion to which no responsive pleading is required.

33. Denied. Answering Defendants are without sufficient knowledge, information or belief to make a determination as to the truth and veracity of this averment and therefore deems it denied.

34. Denied. Answering Defendants are without sufficient knowledge, information or belief to make a determination as to the truth and veracity of this averment and therefore deems it denied. By way of further answer, Answering Defendants had no control or involvement in regard to the scaffolding or the specific incident.

35. Denied as a legal conclusion to which no responsive pleading is required.

36. Denied as a legal conclusion to which no responsive pleading is required.

37. Denied. Answering Defendants are without sufficient knowledge, information or belief to make a determination as to the truth and veracity of this averment and therefore deems it denied. By way of further answer, Answering Defendants deny that they had any ownership or involvement with the scaffolding or the setup of the scaffolding as described in this averment.

38. Denied. Answering Defendants are without sufficient knowledge, information or belief to make a determination as to the truth and veracity of this averment and therefore deems it denied.

39. Denied. Answering Defendants are without sufficient knowledge, information or belief to make a determination as to the truth and veracity of this averment and therefore deems it denied.

40. Denied. Answering Defendants are without sufficient knowledge, information or belief to make a determination as to the truth and veracity of this averment and therefore deems it denied.

41. To the extent that this averment is directed towards Answering Defendants, Answering Defendants specifically deny that they would have been in any position to provide warnings to the plaintiff in regard to any of the facts alleged in the preceding averments of the Complaint. On the contrary, Answering Defendants were not present at the scene and had no involvement in regard to the scaffolding.

42. To the extent that this averment is directed towards Answering Defendants, Answering Defendants specifically deny that they would have been in any position to provide warnings to the plaintiff in regard to any of the facts alleged in the preceding averments of the Complaint. On the contrary, Answering Defendants were not present at the scene and had no involvement in regard to the scaffolding.

43. To the extent that this averment is directed towards Answering Defendants, Answering Defendants specifically deny that they would have been in any position to provide warnings to the plaintiff in regard to any of the facts alleged in the preceding averments of the Complaint. On the contrary, Answering Defendants were not present at the scene and had no involvement in regard to the scaffolding.

44. To the extent that this averment is directed towards Answering Defendants, Answering Defendants specifically deny that they would have been in any position

to provide warnings to the plaintiff in regard to any of the facts alleged in the preceding averments of the Complaint. On the contrary, Answering Defendants were not present at the scene and had no involvement in regard to the scaffolding.

COUNT I - NEGLIGENCE

45. Answering Defendants incorporate by reference their answers to paragraphs 1 through 44 of Plaintiffs' Complaint as if set forth at length herein.

46. (a) – (u). Denied. To the extent that this averment is directed towards Answering Defendants, Answering Defendants specifically deny that they were at any time careless or negligent in any manner whatsoever and specifically in any of the manners alleged in the subparagraphs of this averment. On the contrary, Answering Defendants, at all times pertinent hereto, acted in a reasonable and non-negligent manner and further had no control of or involvement with the scaffolding or other equipment alleged in Plaintiffs' Complaint. By way of further answer, Answering Defendants were not in any way involved in the control or supervision of the aforesaid facility.

47. Denied. To the extent that this averment is directed towards Answering Defendants, Answering Defendants specifically deny that they were at any time negligent or careless in any manner whatsoever. On the contrary, at all times pertinent hereto, Answering Defendants acted in a reasonable and non-negligent manner consistent with the appropriate standard of care. To the extent that this averment alleges injuries and damages, Answering Defendants are without sufficient knowledge or information to form a belief as to this portion of the averment and therefore deems it denied.

48. Denied. To the extent that this averment is directed towards Answering Defendants, Answering Defendants specifically deny that they were at any time negligent or

careless in any manner whatsoever. On the contrary, at all times pertinent hereto, Answering Defendants acted in a reasonable and non-negligent manner consistent with the appropriate standard of care. To the extent that this averment alleges injuries and damages, Answering Defendants are without sufficient knowledge or information to form a belief as to this portion of the averment and therefore deems it denied.

49. Denied. To the extent that this averment is directed towards Answering Defendants, Answering Defendants specifically deny that they were at any time negligent or careless in any manner whatsoever. On the contrary, at all times pertinent hereto, Answering Defendants acted in a reasonable and non-negligent manner consistent with the appropriate standard of care. To the extent that this averment alleges injuries and damages, Answering Defendants are without sufficient knowledge or information to form a belief as to this portion of the averment and therefore deems it denied.

50. Denied. To the extent that this averment is directed towards Answering Defendants, Answering Defendants specifically deny that they were at any time negligent or careless in any manner whatsoever. On the contrary, at all times pertinent hereto, Answering Defendants acted in a reasonable and non-negligent manner consistent with the appropriate standard of care. To the extent that this averment alleges injuries and damages, Answering Defendants are without sufficient knowledge or information to form a belief as to this portion of the averment and therefore deems it denied.

51. Denied. To the extent that this averment is directed towards Answering Defendants, Answering Defendants specifically deny that they were at any time negligent or careless in any manner whatsoever. On the contrary, at all times pertinent hereto, Answering Defendants acted in a reasonable and non-negligent manner consistent with the appropriate

standard of care. To the extent that this averment alleges injuries and damages, Answering Defendants are without sufficient knowledge or information to form a belief as to this portion of the averment and therefore deems it denied.

52. Denied. To the extent that this averment is directed towards Answering Defendants, Answering Defendants specifically deny that they were at any time negligent or careless in any manner whatsoever. On the contrary, at all times pertinent hereto, Answering Defendants acted in a reasonable and non-negligent manner consistent with the appropriate standard of care. To the extent that this averment alleges injuries and damages, Answering Defendants are without sufficient knowledge or information to form a belief as to this portion of the averment and therefore deems it denied.

53. Denied. To the extent that this averment is directed towards Answering Defendants, Answering Defendants specifically deny that they were at any time negligent or careless in any manner whatsoever. On the contrary, at all times pertinent hereto, Answering Defendants acted in a reasonable and non-negligent manner consistent with the appropriate standard of care. To the extent that this averment alleges injuries and damages, Answering Defendants are without sufficient knowledge or information to form a belief as to this portion of the averment and therefore deems it denied.

54. Denied. To the extent that this averment is directed towards Answering Defendants, Answering Defendants specifically deny that they were at any time negligent or careless in any manner whatsoever. On the contrary, at all times pertinent hereto, Answering Defendants acted in a reasonable and non-negligent manner consistent with the appropriate standard of care. To the extent that this averment alleges injuries and damages, Answering

Defendants are without sufficient knowledge or information to form a belief as to this portion of the averment and therefore deems it denied.

55. Denied. To the extent that this averment is directed towards Answering Defendants, Answering Defendants specifically deny that they were at any time negligent or careless in any manner whatsoever. On the contrary, at all times pertinent hereto, Answering Defendants acted in a reasonable and non-negligent manner consistent with the appropriate standard of care. To the extent that this averment alleges injuries and damages, Answering Defendants are without sufficient knowledge or information to form a belief as to this portion of the averment and therefore deems it denied.

WHEREFORE, Answering Defendants demand judgment in their favor and dismissal of Plaintiffs' Complaint with prejudice.

COUNT II

56. Answering Defendants incorporate by reference their Answers to paragraphs 1 through 55 as if set forth at length herein.

57. Answering Defendants are without sufficient knowledge or information to form a belief as to the truth of this averment and therefore deem it denied.

58. Denied. To the extent that this averment is directed towards Answering Defendants, Answering Defendants specifically deny that they were at any time negligent or careless in any manner whatsoever. On the contrary, at all times pertinent hereto, Answering Defendants acted in a reasonable and non-negligent manner consistent with the appropriate standard of care. To the extent that this averment alleges injuries and damages, Answering Defendants are without sufficient knowledge or information to form a belief as to this portion of the averment and therefore deems it denied.

WHEREFORE, Answering Defendants demand judgment in their favor and dismissal of Plaintiffs' Complaint with prejudice.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred and/or limited based upon plaintiffs' comparative and/or contributory negligence.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred based upon application of the doctrine of assumption of the risk.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to state a cause of action upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint and claims should be dismissed based upon lack of actual or constructive notice.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims, all of which are expressly denied, are the direct and proximate result of actions or inactions by parties or entities over whom Answering Defendants have neither control nor responsibility.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred and/or limited based upon plaintiffs' failure to mitigate damages.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred based upon the applicable statute of limitations.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred based upon application of the doctrine of laches.

WHEREFORE, Answering Defendants demand judgment in their favor and dismissal of Plaintiffs' Complaint with prejudice.

HARVEY, PENNINGTON LTD.

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Dated: November 22, 2016

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JAMES J. WYLAM and JANICE L. WYLAM, h/w Plaintiffs v. TRADER JOE'S COMPANY, ET AL. Defendants	CIVIL ACTION NO. 3:16-cv-02112-RDM

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Answer of Defendants, Trader Joe's Company, Trader Joe's East, Inc. and T.A.C.T. Holding Inc., with Affirmative Defenses was electronically filed with the Court on November 22, 2016 and is available for viewing and downloading from the ECF system. All counsel of record were also served via electronic notification and hard copy.

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